

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:15-CR-11 JCM (CWH)

Plaintiff(s),

ORDER

v.

JEROME MICHAEL BELL and
DESHAWN WALKER,

Defendant(s).

Presently before the court is defendant Deshawn Walker's motion for review and amendment of a magistrate judge's detention order. (Doc. # 23). The government has not filed a response, and the time for doing so has passed.¹

I. Background

Mr. Walker was charged by a grand jury on January 14, 2015. (Doc. # 12). The indictment charges Mr. Walker and his codefendant, Jerome Michael Bell, with three counts: armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d); using and carrying a firearm in furtherance of a crime in violation of 18 U.S.C. § 924(c)(1)(A)(2); and criminal conspiracy in violation of 18 U.S.C. § 371. (Doc. # 12).² The United States had previously filed a criminal complaint against both defendants on January 2, 2015. (Doc. # 1).

¹ Defendant Walker filed a notice of the government's non-opposition (doc. # 27), noting that Local Criminal Rule 47-9 provides that a party's failure to oppose a motion shall constitute consent to the motion. That rule does not, however, compel the court to grant a motion without merit.

² On January 6, 2016, the grand jury returned a superseding indictment (doc. # 85) against both defendants, adding no new charges.

1 Mr. Walker made an initial appearance on January 5, 2015, before Magistrate Judge
 2 Hoffman.³ (Doc. # 6). Judge Hoffman ordered the defendant detained, and he was remanded to
 3 custody. (*Id.*) On that same date, Judge Hoffman issued an order of detention for the defendant.
 4 (Doc. # 8).

5 **II. Legal Standard**

6 Title 18 U.S.C. § 3145(b) provides that “[i]f a person is ordered detained by a magistrate .
 7 . . the [detained] person may file, with the court having original jurisdiction over the offense, a
 8 motion for revocation or amendment of the order.” The standard of review is de novo. *See, e.g.,*
 9 *United States v. Koenig*, 912 F.2d 1190, 1191-92 (9th Cir. 1990); *United States v. Leon*, 766 F.2d
 10 77, 80 (2d. Cir. 1985). The court must review the evidence presented to the magistrate judge and
 11 make “its own independent determination whether the magistrate [judge’s] findings are correct,
 12 with no deference” to either the magistrate judge’s factual findings or ultimate conclusion
 13 regarding the propriety of detention. *Koenig*, 912 F.2d at 1192-93. The court may, but need not,
 hold an evidentiary hearing to make this determination. *See id.*

14 Pursuant to 18 U.S.C. § 3142(e) (“section 3142”), the court must detain a defendant if it
 15 finds that “no condition or combination of conditions will reasonably assure the appearance of the
 16 person as required and the safety of any other person and the community.” The statute provides a
 17 list of factors for the court to consider in determining whether detention is necessary: “(1) The
 18 nature and circumstances of the offense charged . . . ; (2) the weight of the evidence against the
 19 person; (3) the history and characteristics of the person . . . ; and (4) the nature and seriousness of
 20 the danger to any person or the community that would be posed by the person’s release.” 18 U.S.C.
 § 3142(g).

21 **III. Discussion**

22 Judge Hoffman found that there is both (i) a serious risk that defendant will not appear and
 23 (ii) a serious risk that the defendant will endanger the safety of another person or the community.
 (Doc. # 8 at 2). In so finding, Judge Hoffman stated:

24 Based on the information as set forth in the government’s proffer, as well as the information
 25 provided to the Court by Pretrial Services, the Court finds the defendant poses a substantial
 26 risk of danger to the community and a substantial risk of nonappearance. The defendant’s
 27 prior criminal history record reflects two prior misdemeanor convictions, four prior failures
 to appear and an active warrant. Additionally, the defendant lacks employment, financial

28 ³ Defendant was arraigned and entered a plea of not guilty on January 22, 2015. (Doc. #
 18).

1 and property ties to the community. The Court finds there are no conditions or combination
2 of conditions that the Court could fashion at this time that would reasonably protect the
3 community against the risk of danger posed by the defendant or assure the defendant's
appearance at future court proceedings, accordingly, the defendant is ordered detained
pending trial.

4 (*Id.*)

5 Based on those facts and the credible testimony offered at the initial appearance hearing,
6 Judge Hoffman found by clear and convincing evidence that the defendant is a danger to the
7 community. (*Id.*) Further, he found by a preponderance of the evidence that the defendant is a risk
8 of flight and that no condition or combination of conditions would reasonably assure the safety of
the community or defendant's appearance as required. (*Id.*)

9 Mr. Walker objects to the detention order. (Doc. # 23). Defendant asserts that he is not a
10 flight risk. He indicates that contrary to the court's findings, he does have ties to the community,
11 specifically an employment opportunity and a potential residence. (*Id.* at 4–5). Defendant filed a
12 letter indicating that he has an employment opportunity at St. Paul Stamps. (*Id.* at 4). He states that
13 if released, he will reside at his grandmother's home, next to the home of his daughter and her
14 mother. Finally, Mr. Walker argues that if released, his grandmother would agree to be a third
15 party custodian, ensuring his court appearances.

16 The court finds that these limited community ties are not sufficient to ensure the appearance
17 of a criminal defendant charged with armed bank robbery. Mr. Walker's past criminal history and
18 failures to appear indicate an overall lack of respect for the legal process, whether the failed
19 appearances were for major or minor matters. Mr. Walker now faces a series of serious felony
20 charges and poses a flight risk. Moreover, evidence put forth at the initial appearance hearing
21 indicates that Mr. Walker has a longstanding history of unemployment, few financial resources,
and a substance abuse problem.

22 Moreover, these community ties do not affect the court's determination that Mr. Walker is
23 a danger to the community. Mr. Walker is charged with a violent bank robbery involving a firearm
24 and has been accused of being involved in a car accident in an attempt to avoid being apprehended
25 for the same. Defendant offers that the court can place Mr. Walker on GPS monitoring to ensure
26 the safety of the community. Defendant does not explain how placing him on an ankle monitor
27 makes Mr. Walker less of a threat to the safety of the community. The court finds that this condition
28 would not adequately ensure the safety of the community. Pretrial services do not have the

1 resources to actively and constantly track every defendant who would prefer to be released pending
2 trial to properly ensure the safety of the community at all times.

3 Ultimately, the new evidence of a residence and employment opportunity for Mr. Walker
4 do not persuade the court that Mr. Walker will appear or that he is not a danger to the community.
5 His ties to this community are still relatively weak, and given the nature of the charges and the
6 facts and evidence against him, Mr. Walker is a threat to the safety of the community. His motion
7 will therefore be denied.

8 **IV. Conclusion**

9 Based on a *de novo* review of Judge Hoffman's findings and conclusions, as well as the
10 foregoing discussion, the court finds by a preponderance of the evidence that the defendant is a
11 risk of flight and that no condition or combination of conditions will reasonably assure the safety
12 of the community. Moreover, the court finds that the defendant is a danger to safety of the
13 community by clear and convincing evidence.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Deshawn
16 Walker's motion for review and amendment of a magistrate judge's detention order (doc. # 23)
17 be, and the same hereby is, DENIED.

18 DATED January 19, 2016.

19 
UNITED STATES DISTRICT JUDGE